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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/085,564	02/26/2002	Keith K. Daellenbach	BJT 332	8968

7590

07/01/2003

Kolisch, Hartwell, Dickinson,
McCormack & Heuser
200 Pacific Building
520 S.W. Yamhill Street
Portland, OR 97204

EXAMINER

GHAFOORIAN, ROZ

ART UNIT	PAPER NUMBER
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3763

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DATE MAILED: 07/01/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/085,564

Applicant(s)

DAELLENBACH, KEITH K.

Examiner

Roz Ghafoorian

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 5-5-2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) 26-32 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 February 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2
- 4) ☐ Interview Summary (PTO-413) Paper No(s) _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

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DETAILED ACTION

Election/R stricti ns

1. Applicant's election of claims 1-25 in Paper No. 4 is acknowledged.

Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)). This action is made final.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined

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under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

2. Claims 1-4, 6, 16-18, 19-24 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent no.5026343 to Holzer.

Holzer teaches a needle less jet injection device with a rigid end 14 effectors including a plurality of orifices ; a fluid reservoir 6 in fluid communication with the end effectors; and an ejection mechanism adapted to eject the fluid from the fluid reservoir through the end effectors and out of the orifice with sufficient pressure to penetrate the organ (figures 5-7); the end effectors includes a straight shaft section 14 and a distal section 5; wherein some of the orifices are located the distal section.

3. Claims 1-7, 9, 11-25 are rejected under 35 U.S.C. 102(e) as being anticipated by US Patent Pub No. US 2003/0083607 A1 to Bobo, JR.

Bobo teaches a needle less jet injection device with a rigid end effectors including a plurality of orifices; a fluid reservoir in fluid communication with the end effector ; and an ejection mechanism adapted to eject the fluid from the fluid reservoir through the end effectors and out of the orifice with sufficient pressure to penetrate the organ ; the end effectors includes a straight shaft section and a distal section ; wherein some of the orifices are located the distal section.

(paragraph 0147) the distal section is curved (figures 44b and 44d) the outer diameter of the end effector is between 0.100 and 0.300 inches (paragraph 0141, 0136, 0138)

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4. Claims 1-7, 9-13, 19-24 are rejected under 35 U.S.C. 102(e) as being anticipated by US Patent No.6344027 to Goll.

Goll teaches a needle less jet injection device use for the heart with a rigid end effectors including a plurality of orifices; a fluid reservoir in fluid communication with the end effector ; and an ejection mechanism adapted to eject the fluid form the fluid reservoir through the end effectors and out of the orifice with sufficient pressure to penetrate the organ ; the end effectors includes a straight shaft section and a distal section (figure 6E) ; wherein some of the orifices are located the distal section. the outer diameter of the end effector is between 0.100 and 0.300 inches (Col.3, lines 15-25)

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent No.6344027 to Goll or US Patent Pub No. US 2003/0083607 A1 to Bobo, JR Or US Patent no.5026343 to Holzer.

As mentioned above Goll, Holzer and Bobo all teach the applicant invention however none of the above prior art teach the use of ethanol with their apparatus. All of the above inventors do use their apparatus for some type of

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medication or fluid therefore it would have been obvious to one having ordinary skill in the art to have used the above prior art for the use of introduction of ethanol because of the above apparatus can be used for medication or fluid introduction into an organ and hence are capable for carrying ethanol.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Roz Ghafoorian whose telephone number is 703-305-2336. The examiner can normally be reached on 8:30am-4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Casler can be reached on 703-308-3552. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.

RG
June 23, 2003



**MICHAEL J. HAYES
PRIMARY EXAMINER**